

OGC Has Reviewed

OLC 78-0545/3

DD/A Registry
File *Legal*

25 AUG 1978

DD/A Registry

78-0548/3

MEMORANDUM FOR: Director of Central Intelligence

STATINTL FROM:

Acting Legislative Counsel

SUBJECT: Firearms Legislation

REFERENCE: Correspondence with Chairman Bayh, Dated
26 May 1978 and 28 June 1978 (Tab A)

1. Action Requested: It is requested that at the next appropriate opportunity you raise with Chairmen Bayh and Boland our concern that legislation to clarify and expand firearms authority for Agency employees receive full and prompt consideration by the Congress.

2. Background: On 11 May 1978 the Administration forwarded to the House and the Senate proposed legislation to clarify and expand the authority for employees of the CIA to carry firearms. This draft legislation was forwarded to the two intelligence oversight committees; to date, neither has taken any formal action. On 26 May 1978 Chairman Bayh wrote a letter to you requesting clarification of the proposed firearms legislation. This letter and the reply from you to Chairman Bayh are included in Tab A.

In follow-up conversations between my staff and the staff of the Senate Select Committee on Intelligence, it has become apparent the Committee is not inclined to press for separate consideration of the legislation; rather, the staff has indicated the SSCI will support us in making sure the charter legislation contains the necessary authority in this area.

We have been monitoring legislation that is now active and that is likely to be acted on by the Congress before this Congress adjourns in order to identify a possible "vehicle" for our firearms proposal. At present there appears to be no readily available vehicle; we will continue to be alert to such a contingency. Although we could press for introduction of a separate bill this session, and thereby impress the Congress and those in the Agency who are concerned with the lack of clear firearms authority that we are doing everything possible to obtain enactment of the legislation, I believe such a move could prove counterproductive.

A separate bill combining expanded firearms authority and mention of the CIA would, by that fact alone, draw a certain amount of negative attention. Since there is virtually no chance that such a bill could be enacted this session at any rate, there would be no real chance to put the bill in its full and appropriate context, and thereby negate such criticism; this could make enactment of the bill next year slightly more difficult. The better course of action at this late stage in the 95th Congress would be to impress upon the leadership of our oversight committees the importance we attach to legislative clarification of our firearms authority, and leave introduction of the legislation for the start of the 96th Congress in January 1979. We would, therefore, include in our proposed legislative program to OMB our proposed firearms legislation for reintroduction early next year.

3. Recommendation: It is recommended that you raise this matter with Chairmen Bayh and Boland at the next target of opportunity to impress on them the importance we attach to this legislation and indicating to them we intend to seek favorable action on the legislation as soon as possible next year (i.e., not necessarily only in the context of the charter legislation).

SIGNED

[Redacted Signature Box]

STATINTL

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OLC:RLB:sm (24 Aug 78)

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Washington, D.C. 20505

Executive Registry

78-9069/4A

DD/A Registry

78-0598/2

28 JUN 1978

Honorable Birch Bayh, Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

DD/A Registry
File *[Signature]*

Dear Mr. Chairman:

Thank you for your letter of 26 May 1978 concerning our proposed firearms legislation. I very much appreciate your commitment to work with us on this matter.

In line with your request, please find enclosed our views on the firearms provision in S. 2525.

The desirability of including the firearms authority in charter legislation is of course appreciated. However, I am also deeply concerned with the lack of clarity in our existing statutory authority to support our current needs and practices. Therefore, I would urge that the Committee review its assessment of the importance and urgency of clearer authority in light of the serious complications that could arise.

Yours sincerely,

/s/ Stansfield Turner

STANSFIELD TURNER

Enclosure

Distribution:

Orig - Addressee

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✓ 1 - DDA

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OLC:RLB:sm (retyped 23 Jun 78)

VIEWS OF THE DIRECTOR OF CENTRAL INTELLIGENCE COMPARING
PROPOSED LEGISLATION CONCERNING FIREARMS AUTHORITY FOR THE
CENTRAL INTELLIGENCE AGENCY WITH PROVISIONS IN SECTION 421
OF S. 2525, THE "NATIONAL INTELLIGENCE REORGANIZATION AND
REFORM ACT OF 1978"

The provisions incorporated in subsection 421(i) of S. 2525, the intelligence charter legislation, address the issue of firearms authority for the Central Intelligence Agency, but are insufficient.

a. The language of subsection 421(i) grants authority for Agency personnel to carry firearms only within the United States. The Agency's proposal submitted to Vice President Mondale, on the other hand, authorizes Agency personnel to carry firearms, without geographic limitation; but, provides that, within the United States, firearms may be carried only for the specified purposes. In my view, this general grant of authority, coupled with limitations on domestic use of firearms, is the necessary and appropriate scope of any legislation.

b. Subsection 421(i) would authorize only Agency "employees" to carry firearms. S. 2525 contains no general definition of "employee." Moreover, the scope of other definitions of "employee" found in statutes, or as included in paragraph 441(a) of S. 2525, are not sufficient for purposes of including all Agency personnel within the scope of those who should be allowed to carry firearms. In lieu of the term "Agency employees," any firearms legislation should refer to "Agency personnel," as is reflected in the proposed legislation forwarded to Vice President Mondale.

c. Subsection 421(i) provides authority for Agency employees to carry firearms "for courier protection purposes." In my view, this formulation is ambiguous. For example, it is unclear whether authority to use firearms under this language would extend only to official Agency "couriers" or whether it would extend to other Agency employees specially designated to carry Agency information or other materials. It is also important that the language of the legislation reflect clearly that firearms authority runs to protection of the information concerning intelligence sources and methods. The wording of the proposal submitted by the Agency specifies that firearms may be authorized to protect "information concerning intelligence sources and methods and classified intelligence documents and material." This language would avoid problems that could arise if it were necessary to link protection of sources and methods to a particular set of circumstances or category of circumstances.

d. Unlike subsection 421(i), the proposed legislation submitted by the Agency explicitly provides that firearms may be authorized to protect "facilities, property, and any medium of exchange owned or utilized by the Agency." This is necessary, for example, to make clear that physical facilities of the CIA, which are subject to possible threats of violence, and which cannot, for reasons of security, always be protected in the same manner as Government properties generally, may be protected by the use of firearms. Furthermore, since the Agency on occasion needs to transport secretly sums of money or other mediums of exchange within the United States, the legislation must clearly authorize use of firearms for this purpose.

e. Subsection 421(i) should be read in conjunction with subsection 421(h), which authorizes the Director to appoint and assign "security officers to police the installations and grounds of the Agency"; these persons "shall have the same powers as sheriffs and constables" to protect persons and property. While it could be argued that subsection 421(h) provides authority for Agency personnel to carry firearms for purposes not enumerated in subsection 421(i)--such as intelligence information not in transit, monies, or physical facilities--in my view such an interpretation would be subject to dispute and would be insufficient. In the first place, legislative language authorizing a particular activity--in this case, the carrying of firearms--should be explicit, and the fact that subsection 421(i) explicitly enumerates certain circumstances under which firearms may be used, while subsection 421(h) does not so specify, would seem to at least raise a presumption that subsection 421(i) is intended to constitute the sole firearms-authority provision in the legislation. Moreover, even if subsection 421(h) were construed to include firearms authority (or if it were so amended), the present language of that subsection appears to extend only to protection of designated installations and grounds, and not to the protection of Agency information or materials, wherever located, not necessarily at Agency installations or grounds. Again, in my view, these authorities are necessary and are of sufficient importance that the operative statutory provisions should be as clear as possible.

f. Yet another aspect of this matter which subsection 421(i) fails to address is the transportation and utilization of firearms for training purposes. Given the other specific purposes for which the use of firearms would be authorized under this legislation, I believe the necessary related authority to transport and utilize firearms for training must itself be specifically included. The proposal submitted to the Vice President by the CIA includes language to this effect.

g. While both the Agency's proposal and subsection 421(i) include provisions authorizing the carrying of firearms to protect certain CIA personnel regardless of protection which might be based on another specified authority, I would like to point out that the Agency's proposed language includes particulars not in subsection 421(i), which were worked out jointly with the Department of Justice. For example, the Agency proposal would limit exercise of this authority to 120 days, unless renewed. Also, the Agency proposal includes reference to "other Agency personnel," rather than "officials of the Agency." The term "officials" is a more restrictive and less-frequently used term in CIA personnel-related matters. Further, not only Agency "officials" but all Agency personnel may, in exigent circumstances, require protection. Since this authority would be based in the first instance on a designation by the Director or Deputy Director that other Agency persons require protection, there would seem to be no need to use the more restrictive and ambiguous term "officials" rather than "personnel."

h. Finally, I should like to point out that the Agency proposal, again unlike subsection 421(i), includes as a prefatory proviso that the carrying of firearms for all the purposes specified will be under regulations which the Director shall prescribe. In my view, this is an appropriate requirement which emphasizes that this important authority will only be utilized in necessary circumstances.

DRAFT

OLC 78-0545/J

Honorable Birch Bayh, Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of 26 May 1978 (Q #3560), acknowledging receipt of our proposed legislation to extend and clarify authority for personnel of the Central Intelligence Agency to carry firearms. I appreciate your commitment to work with us on this matter.

While I appreciate your view that our concerns regarding firearms authority for CIA personnel should be addressed in the charter legislation process, I believe the situation our proposal is designed to address is of sufficient importance and urgency to warrant separate and prompt treatment. I take this position primarily because of the serious complications that could flow from a situation in which an Agency officer were forced to use a firearm in the course of his duties.

The realities of our needs and practices in this area, in which Agency personnel daily must rely on that authority to carry firearms, make such a scenario more than simply an idle hypothesis.

The provisions incorporated in subsection 421(i) of S. 2525, the intelligence charter legislation, address the issue of firearms authority, but are, in my view insufficient.

a. The language of subsection 421(i) grants authority for Agency personnel to carry firearms only within the United States. Our proposal submitted to Vice President Mondale, on the other hand, authorizes Agency personnel to carry firearms, without geographic limitation; but, provides that, within the United States, firearms may be carried only for the specified purposes. In my view, this general grant of authority, coupled with limitations on domestic use of firearms, is the necessary and appropriate scope of legislation.

b. Subsection 421(i) would authorize only Agency "employees" to carry firearms. S. 2525 contains no general definition of "employee." Moreover, the scope of other definitions of "employee" found in statutes, or as included in paragraph 441(a) of S. 2525, are not sufficient for purposes of including all Agency personnel within the scope of those who may be authorized to carry firearms. It is therefore recommended that in lieu of the term "Agency employees," the firearms legislation include reference to "Agency personnel." This is reflected in the proposed legislation forwarded to Vice President Mondale.

c. Subsection 421(i) provides authority for Agency employees to carry firearms "for courier protection purposes." In my view, this formulation is ambiguous. For example, it is unclear whether authority to use firearms under this language would extend only to official Agency "couriers." It is important that the language of the legislation reflect clearly that firearms authority runs to protection of the information concerning intelligence sources and methods. The wording of the proposal submitted by the Agency specifies that firearms may be authorized to protect "information concerning intelligence sources and methods and classified intelligence documents and material." This language would avoid problems that could arise if it were necessary to link protection of sources and methods to a particular set of circumstances or category of circumstances.

d. Unlike subsection 421(i), the proposed legislation submitted by the Agency explicitly provides that firearms may be authorized to protect "facilities, property, and any medium of exchange owned or utilized by the Agency." This is necessary, for example, to make clear that physical facilities of the CIA, which are subject to possible threats of violence, and which cannot, for reasons of security, always be protected in the same manner as Government properties generally, may be protected by the use of firearms. Furthermore, since the Agency on occasion needs to transport secretly sums of money or other medium of exchange within the United States, the legislation must clearly authorize use of firearms for this purpose.

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provides authority for Agency personnel to carry firearms for purposes not enumerated in subsection 421(i)--such as intelligence information not in transit, monies, or physical facilities--in my view such an interpretation would be subject to dispute and would be insufficient. In the first place, legislative language authorizing a particular activity--in this case, the carrying of firearms--should be explicit, and the fact that subsection 421(i) explicitly enumerates certain circumstances under which firearms may be used, while subsection 421(h) does not so specify, would seem to at least raise a presumption that subsection 421(i) is intended to constitute the sole firearms-authority provision in the legislation. Moreover, even if subsection 421(h) were construed to include firearms authority (or if it were so amended), the present language of the subsection appears to extend only to designated installations and grounds, for example, and not to other premises at other locations; nor would the language appear to provide authority to protect monies or other medium of exchange. Again, in my view, these authorities are necessary and are of sufficient importance that the operative statutory provisions should be as clear as possible.

f. Yet another aspect of this matter which subsection 421(i) fails to address is the transportation and utilization of firearms for training purposes. Given the other specific purposes for which the use of firearms would be authorized under this legislation, I believe the necessary related authority to transport and utilize firearms for training must itself be specifically included. The proposal submitted to the Vice President by the CIA includes language to this effect.

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h. Finally, I should like to point out that the Agency proposal, again unlike subsection 421(i), includes as a prefatory proviso that the carrying of firearms for all the purposes specified will be under regulations which the Director shall prescribe. In my view, this is an appropriate requirement which emphasizes that this important authority will only be utilized in necessary circumstances.

I am glad to take this opportunity to provide your Committee with this background information, and, again, I appreciate very much your commitment to work with us in addressing and resolving this important matter expeditiously.

Yours sincerely,

STANSFIELD TURNER

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Legislative Counsel

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78-0548//
19 June 1978

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DATE

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COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. DDA

Attn: [redacted]

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Chairman Bayh, of the SSCI, has asked the Director for additional explanation in support of our proposed firearms legislation (and in reaction to the relevant provision in the charter legislation), which the SSCI has received pursuant to its jurisdictional mandate. Rather than respond with an interim reply, I have drafted the attached substantive response; this also emphasizes the importance we attach to resolution of this matter.

The response is due to the Director by COB Wednesday, 21 June. Since the letter includes no new material, but simply reiterates the reasons for our current proposal, all I require is your office's oral concurrence. In order that the deadline be met, please let me have your concurrence no later than noon, Tuesday, 20 June 1978. I have sent a copy to [redacted] O/S, for concurrence. Thank you.

Assistant Legislative Counsel

Per [redacted]
Concurrence called
in 6/20/78 0836
cc

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OLC 78-0399/134
5 December 1978

DD/A Registry

78-1050/7

MEMORANDUM FOR THE RECORD

DD/A Registry

Legal

STATINTL FROM :
Assistant Legislative Counsel

SUBJECT: "Intelligence Charter Legislation"

1. For the second time in as many weeks the Administration's approach to Charter Legislation has taken a change in direction. Last week's SCC meeting broke down without resolution of any of the Title II issues presented in the Working Group's "issues paper" and resulted in the formation of a new Administration committee to be headed up by David Aaron of the NSC staff. Other members include the DDCI and Messrs. Reasor, Newsom and Civiletti from Defense, State, and Justice respectively. The purpose of the new committee is to work to resolve as many of the Title II issues as possible and to report to the SCC those which the new committee finds unresolvable. It would appear that the Administration's Charter Working Group will have no further input and/or control vis-a-vis the new committee - with the exception that the Working Group's "issues paper" may be used as a springboard for the new committee's deliberations.

2. The formation of the new committee would appear to be problematic from the standpoint that we now have a new Administration committee" under the direction and control of David Aaron" whose philosophical penchant and bent is not at all unlike those which motivate the key Senate staffers charged with managing the legislation. The operative effect of this may be to allow the new committee to become a vehicle for greater SSCI input into what was originally viewed to be exclusively Executive Branch deliberations on issues of great importance to the Agency, the Intelligence Community, and the Executive Branch itself. The first meeting of the new committee will likely be taken up in great part with deciding just how such a group should procedurally attack the many knotty issues that remain unresolved in Title II.

3. The formation of the new committee can be viewed as a barrier to what Bill Miller, SSCI Staff Director, viewed as his timetable for the legislation. The Senate Staff Director has on numerous occasions - and as recently as last week in conversation with the Legislative Counsel - stated

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the view that a "consensus" bill could be hammered out by Christmas for early reintroduction in the 96th Congress. It would appear that last week's SCC decision will force Mr. Miller to reset his legislative timetable according to the new Administration committee's progress.


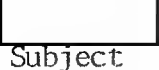
4. Last week the Legislative Counsel also met with the House Oversight Committee Staff Director, Tom Latimer. The HPSCI Staff Director expressed skepticism with regard to legislatively handling such complex issues - replete with restrictions - as presented in Charter Legislation in the comprehensive form the Senate version has espoused. He stated further that to date there has been no interest at all in charters on the House side and the HPSCI does not want to consider any Charter Legislation that does not represent a consensus between the Administration and the Senate.

STATINTL



Distribution:

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OLC 78-0399/135

5 December 1978

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78-1050/8

MEMORANDUM FOR THE RECORD

STATINTL FROM : [REDACTED]
Assistant Legislative Counsel

SUBJECT: 13 November 1978 Meeting with SSCI Staff Re S. 2525 Intelligence
Charter Legislation

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1. On 13 November 1978, the undersigned along with Anthony A. Lapham, General Counsel, [REDACTED] Assistant General Counsel, and [REDACTED], Chief, Legislation Staff/OLC, attended subject meeting. Representatives of the SSCI included Bill Miller, Staff Director as well as John Elliff and Keith Raffel. This meeting marked the reopening of substantive charter discussions between the intelligence agencies and the SSCI, the first to take place since the formation of the SCC Intelligence Charter Working Group chaired by Anthony A. Lapham. [Note: individual agencies - CIA - FBI - NSA - have had continued contact with the SSCI staffers negotiating changes to their respective entity titles, IV-VI; however, the 13 November meeting represents the first time since the introduction of the legislation that "Administration" positions have been aired.]

2. Prior to commencement of a page by page review of Title I, the Senate Committee's Staff Director made the following comments with regard to the Working Group's redraft of Title II which had been forwarded to the Committee staff late the previous week:

-- The Working Group's redraft of Title II contains no standard against which special activities/covert actions can be measured; the Committee staff indicated that Title II must contain a high standard for such activities and suggested that the "Vance standard" would be appropriate. Upon questioning the staff indicated that the "Vance standard" had its origins in Church Committee testimony and would require that:

(1) Special activities should be engaged in only when overt measures will not be able to do the job required - although it is clear that not all overt measures must first be tried;

(2) Special activities must be consistent with declared American policies; and,

(3) Special activities must not be engaged in unless they are vital or essential to the national interest.

-- Some statutory provision must be made to prohibit particular forms of special activities (section 135 of S. 2525) to include a

statutory prohibition against assassination; the staff pointed out that prohibitions would be consistent with U.S. policy and political dictates; these prohibitions at a minimum would be necessary to get a consensus behind the legislation; the staff also hinted that the "Vance standard" should be applied with regard to such activities.

-- The legislation must contain some statutory protection for particular professions - the press, academics, and clergy; the staff pointed out that these institutions are fragile enough to warrant protection; the staff opined that it would be best to allow the governing body of such institutions to be witting of intelligence links and more suitable to place restrictions on the intelligence agencies and not the professions over whom the Oversight Committees have no control.

-- With regard to the question of electronic surveillance of U.S. persons abroad, the staff - John Elliff in particular - stated that as to the issue of the applicability of the 4th Amendment to U.S. persons abroad when U.S. department or agencies are involved in the surveillance, the staff views such situations as the "flag following" the U.S. person abroad; in such situations a court warrant should be required; when third parties - such as liaison and other foreign security/intelligence services - are involved, the Attorney General should have a "control" role by requiring AG approval thereof and application of "minimization" procedures thereto; Mr. Elliff took this opportunity to underscore the fact that the Committee has "matured" in its thinking on a number of issues and that the Committee thinking of today is different than that of the Committee when the bill was introduced in early February 1978; consequently - according to Elliff - the Committee's thinking now is not necessarily consistent with S. 2525; Elliff also indicated that on this electronic surveillance issue the Committee and the Administration appear to be at "polar positions."

-- The staff indicated that there is a problem with regard to the Administration's redraft in that there are no minimization procedures provided for the dissemination and retention of information collected by what the staff called the "NSA vacuum cleaner" procedure.

3. With regard to these points made by the Committee staff Mr. Lapham pointed out that all of these issues would be going to the SCC and eventually the President for decision.

[Note: substantive discussions with regard to Title I are treated in a separate memorandum]

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STATINTL

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19 September 1978

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File LEGAL

MEMORANDUM FOR: Director of Communications
Director of Data Processing
Director of Finance
Director of Logistics
Director of Medical Services
Director of Personnel
Director of Security
Director of Training
Special Support Assistant, DDA

STATINTL FROM: [REDACTED]
Assistant for Information, DDA

SUBJECT: S.2525 - Proposed Intelligence Charter Legislation -
Title IV, CIA - Revision

REFERENCE: AI/DDA memo dated 25 Aug 78, same subject (DDA 78-1050/3)

1. Please find attached a copy of the OGC response to our comments on the draft of Title IV of the Charter Legislation (S.2525). Most of our concerns are addressed and in several instances our recommendations will be proposed.

2. Two issues, however, require more discussion with OGC:

STATINTL

a. Proprietaries (Section 423). We have been asked to express our concerns and comments relevant to proprietaries to [REDACTED] Chief, Operations and Management Division, OGC.

b. The section on Travel and Other Expenses, Death Gratuities for Certain Agency Personnel (Section 441) defines the term "employee." This term needs to be more explicitly defined. It was also suggested that we discuss this with O&M, OGC.

3. We are preparing a memorandum to Chief, O&M to state the concerns we have expressed in earlier memoranda and invite further discussion of these issues. If after reading the attached you have any additional concerns, please contact me.

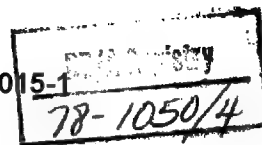
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OGC 78-5838
1 September 1978

MEMORANDUM FOR : Assistant for Information/DDA

STATINTL FROM :
Assistant General Counsel

SUBJECT : S.2525 - Proposed Intelligence Charter
Legislation - Title IV, CIA - Revision

REFERENCE : AI/DDA Memo, DDA 78-1050/3, Same Subject,
Dated 25 Aug 1978

1. Thank you for your helpful comments regarding the Title IV revision. The following paragraphs respond to particular concerns expressed in the referenced memorandum.

2. Section 413(f)(5) - This does not grant the Director of Personnel personnel action authority over O/DNI employees. These authorities are provided as to the Agency in Section 421(j)(1) and (2), and as to the O/DNI in Section 114(m) and (n) where they are expressed as powers of the DNI.

3. Section 421(a)(5) - It was intended that Section 422(a) would provide overall, broad procurement authority. This has satisfied no one and we are requesting the restoration of 421(a)(5).

4. Section 421(a)(7) - We will propose your suggested language here.

5. Section 421(b) - It is being suggested that the reference to DNI and OMB be deleted, and it will be proposed that the Director of CIA be identified in 421(a)(1), rather than the DNI.

6. Section 421(h) - Both suggestions seem to be appropriate.

7. Section 422 - The whole area of accommodation procurement and how best to explain it to the Congress is under discussion in OGC.

8. Section 422(a) - With a sufficiently broad procurement authority, there would appear to be no real need to mention ordnance specifically.

9. Section 422(b) - This suggestion seems appropriate and will be proposed to the SSCI staff.

10. Section 423 - "Proprietary" will be defined elsewhere.

11. Section 423(d) - I have requested specific guidance in the "proprietary" area from [] of the O&M Division of OGC (copy attached). I suggest that any particular comments or concerns you may have should be coordinated through that division.

STATINTL

12. Section 426(a) - [] OGC's appropriations and authorizations expert, does not believe this presents a problem in light of the specific nature of congressional authorization of Agency programs.

STATINTL

13. Section 426(c)(3) - We are suggesting this be deleted.

14. Section 431(b)(1) - This is only a small part of the entire protection of sources and methods problem, the best approach to which is the current subject of an Administration study. Let me suggest, however, that loss of "usefulness" appears to be an overly amorphous standard for a criminal statute and may not exist or may be impossible to prove where there is no accompanying loss of safety.

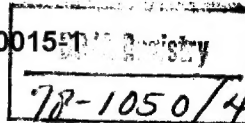
15. Section 441(a)(1) - While I am not totally familiar with the background of this problem, it would seem the OGC conclusion you state is based on case law in the absence of clear statutory authority. This provision would appear to clarify the situation by furnishing specific authority for the Agency to stipulate by contract as to entitlement to various benefits. This matter should be discussed with the OGC component, probably the O&M Division, which has rendered these opinions in the past.

16. Section 441(a)(3) - This modification will be proposed.

17. Section 442 - We are proposing a substitute paragraph which would merely affirm the continued existence of CIARDS.

18. We are proposing an addition to Section 424(2) to make clear the authority to continue to maintain relations with nonintelligence agencies.

STATINTL



MEMORANDUM FOR : Chief, Operations & Management Division/OGC

STATINTL FROM :
Assistant General Counsel

SUBJECT : S.2525 - Proposed Charter Legislation -
Title IV, CIA - Proprietaries

1. As you know, on Tuesday, 1 August 1978, a group of OGC representatives (including of your office) met with Pat Norton, John Elliff, and Keith Raffel of the Senate Select Committee on Intelligence staff concerning CIA's suggested revisions of the proposed CIA charter.

STATINTL

2. Among other things, we discussed the changes proposed for Section 403(b), defining "proprietary," and Section 421(d)(1) and (2), concerning certain aspects of proprietary financing. (Copies attached.) In response to our previously expressed concerns regarding disposition of proceeds from liquidation of proprietaries, the staffers provided a draft of a new section which would replace Section 421(d) entirely. That proposal is attached also and I would appreciate your comments on this language.

3. The staffers were unable to rationalize the continued inclusion of the Attorney General in the liquidation procedure in Subsection (d) over our objection except to say that this was a recommendation of the Church Committee. (See Book I, Foreign and Military Intelligence, pp. 456-59, Rec. 52.) Your comments as to the acceptability or advisability of this requirement, representing on its face nothing more than a notification provision, also would be helpful.

4. In addition, you will note that the liquidation procedure continues to be keyed to proprietaries with a net value in excess of \$50,000.00. The staffers do not feel strongly about this particular figure as the "floor" for reporting proprietary liquidations and have indicated a willingness to modify the figure upward if the current level is so low as to cause needless administrative reporting of relatively trivial transactions. What is needed from you as the basis for urging any increase in this level is a specific breakdown of the numbers and net values of Agency proprietaries, and perhaps, an average net value figure, as well as some idea of how often various classes of proprietaries are liquidated.

5. The staffers continue to be nonreceptive to our requests for authority to utilize proprietary profits in excess of "operational requirements" for the purposes of establishing additional proprietaries. There was some discussion, at John Elliff's instigation, of the idea of an annually appropriated "revolving fund" into which excess profits would be poured and from which proprietary start-up monies could be drawn, but this concept was not endorsed warmly. If we are to make any headway in this regard, we must have some justification for such authorization. Can you generate any real instances, and the frequency with which they arise, in which requiring that excess proprietary profits be deposited in the Treasury and that new proprietaries be established from appropriations or supplemental appropriations would cause us problems? Why would not the Contingency Fund established in Section 425(c) be sufficient for these purposes?

6. Finally, as to the definition of "proprietary" now in Section 403(b), our suggested revisions were not deemed necessary but the definition is being reexamined and will be moved to Title I. Our interests would be served greatly if you are able to develop specific support for the changes we have proposed.

7. Generally, the sooner we are able to respond to these needs, and the more thorough and persuasive the nature of that response, the better our chances to influence the content of the revised version of Title IV. Thus, I would appreciate your comments as soon as is possible.

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Atts

cc:

OGC/ARC/lv

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DD/A Registry

15 SEP 1978

MEMORANDUM FOR: Chief, Operation and Management Division, OGC

STATINTL

FROM:

Assistant for Information, DDA

SUBJECT: S.2525 - Proposed Intelligence Charter Legislation -
Title IV, CIA - RevisionREFERENCE: Memo for AI/DDA from [redacted] dtd 1 Sep 78,
same subject (OGC 78-5838)

STATINTL

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1. [redacted] in his memorandum to me dated 1 September 1978, same subject, suggested that we pass our comments and concerns relevant to proprietaries to you. He also stated that he thought that our concerns with regards to the definition of "employee" as stated in Section 441 should be discussed with you.

2. Our concerns with Section 423 center on reporting the disposition of proprietaries.

a. We think the \$50,000 threshold is unreasonably low; and

b. We question the requirement to report the disposition of a proprietary to the Comptroller General. Would it not be preferable to report such transactions to our oversight committees?

3. Section 441(a)(1) defines the term "employee." We feel this is inadequate for Agency needs. In the past, OGC opinion has been that the circumstances of employment relationship, not the contract itself, establishes the rights and benefits applicable to an individual. The section needs to be more explicit on the point that certain individuals, including "residents," can have an employee relationship in contract status. Office of Personnel will be able to provide you with the details of the various types of employment relationships.

STATINTL

STATINTL

AAI/DDA [redacted] ydc (15 Sep 78)

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